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In re Application of:
Curt Seymour et al.
Appl. No. 10/764,977

**ON PETITION TO WITHDRAW THE
FINAL OFFICE ACTION UNDER 37
CFR 1.181**

Filed: January 26, 2004
For: CUSTOMIZABLE STORAGE
AND DISPLAY SYSTEMS

This is a decision on applicant's petition under 37 CFR 1.181 filed on January 16, 2009 to withdraw the premature FINAL Office Action mailed on November 18, 2008 (It is noted that applicant incorrectly listed the date as October 21, 2008).

The Petition is **DENIED**.

Reference is made to the interview summary mailed April 6, 2009. During the interview between SPE Dickson and the attorney of record, Mr. Rehm, it was determined that the final rejection was proper and that the restriction requirement was proper.

In the petition, applicant alleges that the final rejection mailed November 18, 2008 is premature because the examiner has taken action that is not authorized by any legal authority. In this case, the applicant states that the "examiner ignored Applicant's election of claims and chose what claims would be examined. Consequently, applicant's elected claims remain unexamined." Further, applicant argues that the examiner should have deemed applicant's response to the restriction requirement as "non-responsive" and forced applicant to choose.

The examiner did not ignore the claims that the applicant elected, and in accordance with MPEP 821, the examiner correctly held claims 1-7 as not being directed to the elected subject matter and properly stated that they were withdrawn from further consideration by the examiner in accordance with 37 CFR 1.142(b). Further, the examiner clearly set forth in the Final Office action mailed November 18, 2008 the reasons why the claims withdrawn from consideration are not readable on the elected invention. Applicant may traverse the requirement pursuant to 37 CFR 1.143. If a final

requirement for restriction is made by the examiner, applicant may file a petition under 37 CFR 1.144 or 37 CFR 1.181 for review of the restriction requirement.

The examiner did not err in making the Final rejection. Although the applicant mistakenly indicated that claims 1-7 read on the elected invention, the response to the restriction requirement should not have been made "non-responsive" as argued by the applicant, as the applicant properly responded to the Restriction Requirement. As set forth above, the examiner ultimately clarified the record as to why claims 1-7 are not directed to the elected subject matter.

In light of the interview and upon review of the application and explanation set forth by the examiner in the Final Rejection mailed November 18, 2008, it is concluded that claims 1-7 and 12 were properly withdrawn from further consideration as being drawn to nonelected species and invention

Any questions regarding this decision should be directed to SPE Paul N. Dickson at 571-272-6669.

A handwritten signature in black ink, appearing to read "Frederick Schmidt", is written over a horizontal line. The signature is stylized and cursive.

Frederick Schmidt
Director
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PD/SNM: 3/27/09

SM